

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD14-040
LOCATION OF PROPERTY	Southwest corner of Silver Creek Valley Place and Silver Creek Valley Road
ZONING DISTRICT	A(PD) Planned Development Zoning District
GENERAL PLAN DESIGNATION	Combined Industrial/Commercial
PROPOSED USE	Planned Development Permit to construct a 15,602 square foot commercial center for retail and restaurant uses, which include three drive-through uses and gas station with a car wash and 24-hour convenience store on a 3.06 gross acre site
ENVIRONMENTAL STATUS	Edenvale Development Policy EIR, Resolution No. 70021, as addended by PDC05-045 and PD14-040
CONTACT/ADDRESS	Gerry De Young Ruth and Going, Inc. P.O. Box 26460 San Jose, CA. 95159
OWNER/ADDRESS	San Gabriel Interest, LP 2100 McKinney Avenue, Suite 1450 Dallas, TX. 75201

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Site Description and Surrounding Uses.** The site is currently vacant and is surrounded by vacant properties to the north and east. Single-family residences are located to the northwest across Silver Creel Valley Road. Additional single-family residences are located to the west and south across Highway 101.
2. **Project Description.** This is a Planned Development Permit to construct a 15,602 square foot commercial center consisting of four buildings for retail and restaurant uses, which includes three drive-through uses and gas station with a car wash and a 24-hour convenience store on a 3.06 gross acre site.
3. **General Plan Conformance.** The Project is consistent with the General Plan in that:
 - a. The project involves retail and services that are consistent with the site's Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial, which allows for a broad mix of compatible commercial and industrial uses.

- b. The project conforms with General Plan Land Use policies to establish commercial uses that generate City revenues, provide employment opportunities to residents, and locate commercial uses throughout the City to create complete neighborhoods.
4. **Zoning Code Compliance.** The Project is consistent with the General Development Plan standards of the Planned Development Zoning District (File no. PDC13-023) in the following manner:
 - a. **Parking Requirement.** The proposed development meets the parking requirements as established in the General Development Plan standards.
 - b. **Setbacks.** The proposed buildings meet the established minimum setback requirements from each property line per the General Development Plan standards.
 - c. **Height.** The maximum height of the proposed buildings does not exceed 120 feet per the General Development Plan standards.
 - d. **Riparian Setback.** The proposed project complies with the 100 foot setback for impervious improvements from the edge of the riparian corridor, Coyote Creek, per the General Development Plan standards. A portion of the drive-through for Building P1, not exceeding 8 feet at the greatest, encroaches into the riparian setback. In accordance with the General Development Plan standards, the encroachment is offset by at least an equal area of additional setback immediately adjacent to the riparian corridor.
5. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
 - a. An Addendum was granted for this project under the provisions of environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment in that it conforms to the Edenvale Development Policy. Additionally, the project falls within the scope of the Edenvale Redevelopment Project EIR and all mitigations will be incorporated.
6. **Tree Removal Permit Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
 - a. That the location two (2) ordinance-sized trees with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
The trees identified as numbers 4 and 5 of the Tree Removal Plan are located on the lot such that development of the site would be unreasonably limited if they were to remain.
7. **Planned Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Planned Development Permit.
 - a. The Planned Development Permit, as issued, furthers the policies of the General Plan.
 - i. The project is consistent with the General Plan designation of Combined Industrial/Commercial in that the proposed retail uses are of the type intended under this designation. This designation allows for a broad mix of compatible commercial and industrial uses.

- ii. The project conforms to General Plan Land Use policies that encourage the establishment of commercial uses to generate City revenues, provide employment opportunities to residents, and locate commercial uses throughout the City to create complete neighborhoods.
- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property.
 - i. The project conforms to the Land Use Plan and General Development Standards contained in the Planned Development Zoning (File no. PDC13-023) regarding permitted uses, building setbacks, building height, riparian setback, and parking.
- c. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.
 - i. The proposed buildings and structures are similar in terms of height, massing, and orientation on the site. The buildings also share common architectural elements, such as materials, colors, and style, which create an aesthetically harmonious development as a whole.
- d. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.
 - i. An Addendum was granted for this project under the provisions of environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment in that it conforms to the Edenvale Development Policy. Additionally, the project falls within the scope of the Edenvale Redevelopment Project EIR and all mitigations will be incorporated.

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development plans entitled, "Planned Development Permit, Silver Oaks Plaza" dated July 30, 2014, last revised on November 19, 2014 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Conformance with Previously Approved Zoning.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning (File no. PDC13-023) remain in effect.
7. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
8. **Permit Amendment Required.** A subsequent and complete Planned Development Permit Amendment shall be filed to:
 - a. Approve architecture for building pad no. 4 (P4) prior to issuance of a related Building Permit.
 - b. Decrease the width of the northeast drive isle nearest to the public right of way to 26 feet prior to issuance of a related Grading Permit.

9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
12. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
15. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
16. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
19. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan.
20. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
21. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
22. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy or Interim Lighting Policy, as amended. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Light levels of 1.5 or greater foot-candles average illumination at ground surface are encouraged. For approval of an exception to the requirement for Low Pressure Sodium Lighting, the submittal shall be provided in accordance with the "City of San Jose Interim Lighting Policy Broad Spectrum Lighting for Private Development."

23. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise levels from such equipment will not exceed 55 dBA at the residential property line. All roof mounted mechanical equipment shall be screened from view.
24. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
25. **Green Building Requirements for Tier 1 Non Residential Development (<25,000 square feet).** This development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this permit, the permittee shall submit a LEED green building checklist for said buildings.
26. **Deadline for Commencing Construction.** This permit shall automatically expire four years from and after the date of issuance hereof by said Director if within such four-year period construction of buildings has not commenced, pursuant to and in accordance with the provisions of this permit. The date of issuance is the date this permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this permit for a period of up to two years.
27. **Hours of Operation.** The number of 24-hour uses shall not exceed four per the Planned Development Zoning General Development Plan (File no. PDC13-023).
28. **Exterior clean-up.** Exterior clean-up and maintenance activities including garbage pickup shall not occur later than 10:00 p.m. or prior to 7:00 a.m. when the business is located within 300 feet of residential uses.
29. **Alcohol Sales.** This Permit does not include any approval for off-sale alcohol.
30. **24-Hour Use Management Plan.** The permittee shall comply with the following provisions as noted below to mitigate potential impacts caused by the proposed 24-hour uses. These items shall address concerns/complaints, control of noise, litter, graffiti, and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.
 - a. *Lighting.* The permittee shall provide enhanced lighting of the designated parking and use areas of the site to the satisfaction of the Director of Planning.
31. **Offer of Cross Access Easement with Adjacent Parcel Required.** The developer of the subject project shall enter into a covenant of easement or easement for cross access with the adjacent site at the time development permit is requested on that site if cross access is being requested.
32. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m.
33. **Litter Control.** The permittee shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.
34. **Police Issues.** The permittee shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.

35. **Loitering.** A “No Loitering” sign shall be prominently posted on the exterior of the gas station convenience store.
36. **Speaker Noise.** Drive-through speakers shall not be audible from adjacent residentially used, zoned, or General Planned properties.
37. **Tree Removals.** The removal of two (2) ordinance-sized trees is included in this Planned Development Permit. No other trees larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
38. **Timing of Tree Removals.** For trees that are proposed for removal to accommodate new development, said trees shall not be removed until the related Grading Permit has been issued.
39. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
 - a. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
40. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this permit, the permittee shall maintain the validated permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
41. **Over-Excavation.** All tree planting areas, including street trees, shall be over-excavated and new topsoil placed, to ensure the health of the trees.
42. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines placed, to ensure the health of the trees.
43. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
44. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
45. **Stormwater Runoff Treatment Measures – Maintenance and Records.** The developer shall comply with the following:

- a. All stormwater runoff treatment measures installed on property shall be permanently maintained by the property owner in good repair and free of litter and debris, obstructions, and stored materials.
 - b. All owners of property on which a stormwater treatment measure has been installed pursuant to the requirements of this chapter shall retain, and make available for inspection and copying, all records of inspection and maintenance activities performed on the installed stormwater treatment measure within the five years immediately preceding the demand for such records by any representative of the City.
 - c. It shall be unlawful for any person to alter, remove fail to maintain, or to cause, allow or permit alteration, removal or failure to maintain a stormwater treatment measure that has been installed pursuant to the requirements of this chapter, except pursuant to an adjustment to the development permit for the project if the development permit required installation of the stormwater treatment measure, or pursuant to an administrative permit issued for the removal or alteration of the stormwater treatment measure, if the measure was not installed pursuant to a development permit. The criteria for granting an adjustment or administrative permit shall be that an alternate means of providing equivalent stormwater treatment will be provided.
46. **Post-Construction Stormwater Runoff Treatment Measures - Maintenance and Records.** All post-construction treatment measures must be installed as specified on approved construction plans. Treatment measures shall not be altered or removed, and must be operated and maintained by qualified personnel consistent with approved development plans and/or supplemental operation and maintenance plans. Property owner must ensure that treatment measures continue to operate effectively for the life of the project. Property owners and/or property managers designated by the owner must keep a maintenance schedule and record of all treatment measures maintenance activities. Copies of maintenance schedules and records will be retained and made available for inspection upon request by the City. When used, all proprietary treatment measures must be operated and maintained per the manufacturers' specifications. The City may require additional maintenance beyond the manufacturers' specifications, if needed.
47. **Stormwater Management – Construction Activities.** The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the *CASQA Stormwater BMP Construction Handbook Portal* (July 2012). Prior to the issuance of a grading permit, the permittee may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 East Santa Clara Street, San José, California 95113. The Erosion Control Plan may include BMPs as specified in the *CASQA Stormwater BMP Construction Handbook Portal* (July 2012) for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 277-5161.
48. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be labeled with the "NO DUMPING - FLOWS TO NEIGHBORHOOD CREEK" stencil. The "No Dumping" message should be applied to both the top of the curb and the face of the curb next to the storm drain inlet, preferably on the left side. If this is not feasible, place the message in the street in front of the inlet. The stencils may be obtained, at no charge, through the Environmental Service Department at (408) 945-3000.

49. **Post-Construction Stormwater Runoff Pollution Control Measures (Regulated Projects).** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Low Impact Development (LID) techniques including site design, source control, and numerically-sized stormwater treatment measures to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29 and shall be designed consistent with the SCVURPPP C.3 Handbook guidelines.
50. **Post-Construction Hydromodification Management.** This project must comply with the City's Post-Construction Hydromodification Management Policy (Policy 8-14). The project shall not cause an increase in the erosion potential of the receiving stream over the pre-project (existing) condition. The project shall demonstrate that post-construction stormwater runoff (post-project) does not exceed estimated pre-project (existing) runoff rates and durations.
51. **Construction Noise.** The following mitigation measures shall be implemented for construction activities wherever there is a direct view from existing residences adjacent to the site, or where construction occurs within 500 feet of a residential area.
- a. *Construction Noise.*
 - i. Contractors shall be required to use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used at the project site, as well as at off-site locations with project construction, shall be equipped with adequate muffling devices. All equipment shall be in good mechanical condition, to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
 - ii. The contractor shall schedule on-site and off-site construction activities in shifts to avoid high noise levels caused by simultaneously operating several pieces of noise-generating equipment.
 - iii. Temporary berms or noise barriers, such as lumber, or other material stockpiles shall be installed during construction activities.
 - iv. The following equipment shall be used during construction
 - 1) Earth Removal: Use scrapers as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
 - 2) Backfilling: Use a backhoe for backfilling, as it is less costly and quieter than either noisier bulldozers or loaders.
 - 3) Ground Preparation: Use a motor grader rather than a bulldozer for final grading.
 - 4) Building Construction: Power saws should be shielded or enclosed where practical to decrease noise emissions. Nail guns should be used where possible, as they are less noisy than manual hammering.
 - b. *Blasting Noise.* Blasting activities shall be limited to the hours between 7:00 a.m. and 7:00 p.m. on Monday through Friday. Sufficient advance notification to the City of San José Director of Planning and Building and Director of Public Works and to residents in the area prior to initiating blasting activities shall be provided.

- 52. Construction Impact Mitigation Measures.** The permittee is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
- a. *Compliance.* The permittee shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the permittee, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
 - c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
 - d. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
 - e. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
 - f. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The permittee shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
 - g. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.

- h. *Posting of Telephone Number.* The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File No. PD14-040, City contact, and phone number (department and phone number), shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.
- i. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

53. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.

a. **HYDROLOGY**

- i. **Water Quality - Erosion.** Implementation measures to control erosion during the grading and construction phase include but are not limited to the following:
 - 1) Exposed surfaces shall be stabilized by October 15th of any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
 - 2) Runoff from areas of exposed soils shall be conveyed to siltation basins to provide for the settling of eroded sediments.
 - 3) Storm drain inlets shall be protected with hay bales or silt fences.
 - 4) Streets subject to construction activities shall be damp swept each working day such that all visible debris and soil is removed.
 - ii. **Water Quality - Non-Point Source.** The project site already incorporates several permanent water quality control features to minimize non-point source impacts. The project drainage system shall include landscaped swales along the site perimeter to provide filtration for pollutants prior to discharge to Coyote Creek. For areas of the site not served by landscaped swales, the catch basins will include inlet filters to capture urban pollutants. A maintenance program for the filters shall be specified in the Planned Development Permit. These filters will be maintained and/or replaced at least once per year. In addition, the roadway and parking lot areas of the project will be swept regularly during dry periods to remove dirt, silt and other loose debris.
- b. **AIR QUALITY.** In order to reduce potential PM 10 emissions, the following dust control measures shall be implemented during the project construction phase:
- i. Water all active construction areas at least twice a day.
 - ii. Watering or covering of stockpiles of debris, soil, sand and other loose materials that can be blown by the wind.
 - iii. Cover all trucks hauling soil, sand and other loose materials.
 - iv. Pave, apply water three times a day, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.

- v. Damp sweep daily all paved access roads, parking areas and staging areas (include adjacent public visible soil is carried out to these streets).
- vi. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e. graded areas to be inactive program and for 10 days or more).
- vii. Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles of dirt, sand, etc.
- viii. Limit traffic speeds on unpaved roads to 15 mph.
- ix. Install sandbags or other erosion control measures to prevent silt runoff onto public roadways.
- x. Replant vegetation in disturbed areas as quickly as possible.
- xi. Suspend excavation and grading activity when wind gusts exceed 25 mph.
- xii. Designate a person or persons to oversee the implementation of a comprehensive dust control to increase watering, as necessary.
- xiii. Maintain and operate construction equipment to minimize particulate from exhaust emission. Trucks and equipment shall not be allowed to idle without purpose for long periods. Equipment shall be kept in good condition and well tuned, to minimize exhaust emissions.

c. TRAFFIC

- i. As specific Development of the site is considered for approval for the site, a Traffic Analysis may be required with the issuance of each Planned Development Permit confirming that traffic volumes are within the parameters of the Traffic Analysis performed in connection with the prior zoning of the subject site (PDC05-045).
- ii. A Transportation Demand Management Program shall be completed and submitted to the satisfaction of the Director of Planning prior to the issuance of a Planned Development Permit to reduce the number of automobile trips to the site. The Plan shall include, but not be limited to the following: 1) operation of a shuttle, including routes, frequency, occupancy, and funding sources; 2) participation in the VTA Ecopass program; and 3) car-pooling programs.
- iii. The site has an approved zoning, PDC05-045, and is required to implement traffic mitigations per the approved zoning; which includes improvements to the northbound off-ramp at the Interstate 101/Blossom Hill Interchange. However, the city is proposing a revision to the current Edenvale Area Development Policy (EADP) and the project may elect to join the policy upon City Council adoption. Under the proposed policy, a traffic impact fee may be paid in lieu of the off-ramp improvement in the amount of \$400,000. The Policy includes a complete reconstruction of the Interstate 101/Blossom Hill Interchange and includes the northbound off-ramp, the mitigating construction in PDC05-045.
- iv. Construction of the off-ramp improvement or payment of the Traffic Impact Fee fully mitigates PDC05-045 for up to 212 AM peak hour trips and 259 PM peak hour trips. Any additional traffic generated by the site will require an additional Traffic Impact Analysis. This project is projected to add 207 AM and 207 PM peak hour trips.

d. BIOLOGICAL

- i. Nesting Raptors. If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The permittee shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director Planning Department prior to the issuance of any grading or building permit

Burrowing Owls. The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the satisfaction of the Director of Planning, Building and Code Enforcement indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

- ii. Habitat Protection. All sensitive plant and wildlife habitat areas to be preserved and protected shall be posted with signs stating that no disturbance is allowed including grading, equipment, vehicle, or material storage, or other disruptions prior to construction activity. Fencing shall be required for areas subject to direct impact such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the permittee to prevent disturbances during the length of construction that might disrupt the habitat or trees.
- iii. Tree Removal. The trees proposed for removal shall be replaced on-site in accordance with the City of San Jose tree replacement requirements. In addition, any coast live oaks proposed for removal shall either be preserved and relocated on-site, or moved to an off-site location for transplanting, and/or be replaced on-site to the satisfaction of the Director of Planning. If the oaks are relocated on the project site, replacement planting for these oaks will not be required. Oaks proposed for on-site preservation and/or on-site or off-site relocation shall achieve a minimum 85% survival rate. A tree mitigation program identifying the proposed disposition of the coast live oaks shall be submitted to the satisfaction of the Director of Planning prior to issuance of a Planned Development Permit. The trees shall be monitored for a five year period and the survival rate reported to the Director of Planning on an annual basis. If the 85% survival rate is not achieved, the trees shall be replaced in accordance with the City of San Jose tree replacement requirements.

- iv. Tree Removal. The trees to be removed shall be replaced on-site in accordance with the City of San Jose tree replacement requirements, as follows:

Tree Replacement Table

Type of Tree Removed	Replacement Size/Ratios	
	24" Box	15- gallon
18"+ Native	4	
12.1 – 17.9" Native	2	
6-12" Native		1
18"+ Non-Native	4	

The following measures will be implemented to help reduce impacts to retained trees from site development and to maintain and improve their health and vitality through the clearing, grading, and construction phases.

e. **DESIGN MEASURES**

- i. Any plan affecting trees shall be reviewed by the consulting Arborist with regard to tree impacts. These include, but are not limited to, improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
- ii. The consulting Arborist will identify a Tree Protection Zone for trees to be preserved in which no soil disturbance is permitted. Where approved site improvements encroach within the dripline, the consulting Arborist will determine where a smaller Tree Protection Zone is to be placed, and make recommendations to reduce the impacts of construction in those areas. In the case of surface parking areas encroachment within the dripline, pervious paving material shall be used.
- iii. The Tree Protection Zone of trees to be preserved allows for approved site improvements near, and in some cases within, the dripline. Future refinements to the design, such as lighting and landscaping, should not require grading within the Tree Protection Zone.
- iv. Prior to demolition, the consulting Arborist will prepare a Tree Fencing Plan, detailing the location of all protective fencing.
- v. No underground services including utilities, subdrains, water, or sewer shall be placed in the Tree Protection Zone unless otherwise approved by the Director of Planning.
- vi. Tree Preservation Notes should be included on all plans.
- vii. Any herbicides placed under paving material must be safe for use around trees and labeled for that use.
- viii. Irrigation systems must be designed so that no trenching will occur within the Tree Protection Zone.
- ix. Pre-construction Treatments:
 - 1) Fence all trees to be retained to completely enclose the Tree Protection Zone prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent as approved by consulting Arborist. Fences shall be placed at the dripline. Fences are to remain until all grading and construction is completed.

- 2) Prune trees to be preserved to clean and elevate the crown, providing a level of clearance for vehicles to be determined in consultation with Nolte Associates, Inc., based on the likely vehicle use patterns in the various parking areas. All pruning shall be completed by a certified Arborist or tree worker and adhere to the 'Tree Pruning Guidelines' of the International Society of Arboricultural.
- x. Measures for Tree Protection During Construction:
- 1) No grading, construction, demolition or other work shall occur within the Tree Protection Zone. Any modifications must be approved and monitored by the consulting Arborist.
 - 2) Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting Arborist.
 - 3) If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting Arborist so that appropriate treatments can be applied.
 - 4) Root-injured trees have a limited capacity to absorb water. Therefore, it is important to insure adequate soil moisture in the area of active roots. One to several irrigations may be needed for trees that are at risk. Irrigation shall be specified by the consulting Arborist.
 - 5) No excess soil, chemical, debris, equipment or other materials shall be dumped or stored and no vehicles shall be parked within the Tree Protection Zone.
 - 6) Any additional tree pruning needed for clearance during construction must be performed by a certified arborist and not by construction personnel.
 - 7) Trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on site. All trees to be saved shall be protected by a chain link, or other fencing approved by the Director of Planning prior to any grading or removal of trees. The fence shall occur at the dripline in all cases and shall remain during construction. Tree masses shall be protected with a fence surrounding the dripline of the entire mass.
 - 8) Trees to be removed shall have a permanent marking, either with spray paint or survey flag, prior to the recordation of the PD Permit and shall not be protected with fences. No tree larger than 18" in diameter shall be removed unless a Tree Removal Permit has been approved for the removal of the tree. The recommendations of the project Arborist shall be followed.
- f. **NOISE**
- i. Construction Noise. The following measures shall be implemented to reduce noise impact during construction.
 - 1) Standard construction noise mitigation practices shall be employed to minimize disturbance, including proper muffling and maintenance to equipment.
 - 2) The 7 foot precast concrete wall to be constructed along the common boundary with the Kellner parcel (APN 678-07-019) shall be constructed prior to commencement of any site grading not necessary for construction of the wall to help reduce construction noise impacts, to the satisfaction of the Directors of Planning and Public Works.

ii. Traffic Noise

- 1) Indoor. Prior to issuance of Planned Development permits for a hotel, an acoustical report shall be prepared which shows measures to be included in the building design to ensure that interior noise levels do not exceed 45 dBA.

g. **CULTURAL RESOURCES**

- i. Archaeology. There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
 - 1) If no resources are discovered, the archaeologist shall submit a report to the Planning Department Project Manager to the satisfaction of the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
 - 2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the Planning Department Project Manager to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
 - 3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 25-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reenter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - b) A final report shall be submitted to the Planning Department Project Manager to the satisfaction of the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

54. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

a. Street Improvements:

- i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ii. Proposed driveway shall be constructed with a standard curb cut to conform to City and ADA standards.

b. Transportation:

- i. The site has an approved zoning, PDC05-045, and is required to implement traffic mitigations per the approved zoning; which includes improvements to the northbound off-ramp at the Interstate 101/Blossom Hill Interchange. However, the city is proposing a revision to the current Edenvale Area Development Policy (EADP) and the project may elect to join the policy upon City Council adoption. Under the proposed policy, a traffic impact fee may be paid in lieu of the off-ramp improvement in the amount of \$400,000. The Policy includes a complete reconstruction of the Interstate 101/Blossom Hill Interchange and includes the northbound off-ramp, the mitigating construction in PDC05-045.
- ii. Construction of the off-ramp improvement or payment of the Traffic Impact Fee fully mitigates PDC05-045 for up to 212 AM peak hour trips and 259 PM peak hour trips. Any additional traffic generated by the site will require an additional Traffic Impact Analysis. This project is projected to add 207 AM and 207 PM peak hour trips.
- iii. Maintain/install "No Stopping" signs along Silver Creek Valley Place.

c. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and

- to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
 - d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's preliminary Stormwater Control Plan and numeric sizing calculations have been reviewed. At PD stage, submit the final Stormwater Control Plan and numeric sizing calculations.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.

The project's HM plan and sizing calculations are currently under review. Final inspection and maintenance information for the HM controls must be included on the final HM plans.
 - f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - g. **Assessments:** This project is located within the boundaries of Improvement District 99-218SJ (Hellyer-Piercy), which sold bonds to fund the construction of the street improvements in the surrounding industrial development and to provide access to this site. The bonds are secured by the property and an assessment has been assigned to the parcel based on its current configuration. The assessment for Fiscal Year 2014-15 is \$275,729.98. Any subdivision of this parcel will trigger the need to submit and complete an amended assessment diagram to apportion the assessment to each resultant parcel. An alternate solution prior to subdivision is to pre-pay the outstanding principal balance on the property which is estimated to be approximately \$1,691,475.37 for APN 678-07-040. If the assessment is not pre-paid, then future year assessments will continue to be collected through the County property tax bills minus any credits listed under Tax Code 24Q "HELLYER-PIERCY BND". Please contact Thomas Borden at (408) 535-6831 for assistance in this matter.

h. **Referrals:** This project should be referred to Great Oaks Water.

55. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this 4th day of February 2015.

Harry Freitas, Director
Planning, Building, and Code Enforcement

Deputy